

**40 Years**

**Working Together for Children**

**1976 - 2016**



**June 14 – 17, 2016**

**Merrillville, Indiana**

**Indiana Child Support Conference**

# MODIFICATIONS:

What, where, when, why, who...  
and how.

**For whom do we work?**

**(Hint: See bottom right-hand corner.)**



**SEE ALSO:**

**[in.gov/dcs](https://www.in.gov/dcs)**

**“The office does not represent either  
the custodial party or  
the non-custodial party.”**

“The office does **NOT** represent

**EITHER**

the custodial party

**OR**

the non-custodial party.”

# Rule of Professional Conduct 1.9

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

# MAGIC WORDS!!!

**SHALL = NO DISCRETION! NO CHOICE!**

**MAY = DISCRETION! ONE WAY OR THE OTHER!**

**ADVERSE TO = AGAINST!**

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**So what would happen when  
custody flips?**

**THE IV-D LAWYER IS OUT  
AND NOW YOU NEED A  
SPECIAL PROSECUTOR!!!**

**...unless the former Custodial Parent  
now agrees IN WRITING to let you treat  
him/her the way he/she has been  
demanding you treat the Non - Custodial  
Parent every time a payment was late.**

**Therefore, we represent the children.**



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**Okay, I represent the child. What does that mean?**

“[T]he overarching policy goal of all family court matters involving children: protecting the best interests of those children.”

Chief Justice Randall Shepard  
*Lambert v. Lambert*,  
801 N.E. 2d 1176, 1180 (In. 2007.)

**But how do I know how much “the best interest of the child” is?**

The Indiana State Supreme Court tells you.

That is what the Child Support Obligation Worksheet does.

# Indiana Rules of Court

## Child Support Rules and Guidelines

### Support Rule 2: Presumption

In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.

# MAGIC WORDS!!!

**REBUTTABLE PRESUMPTION** = This is true until someone else proves something different.

**SOMEONE ELSE** = Not you.

As far as you are concerned, this is the answer.

# So who asks for the modification?

[in.gov/dcs](http://in.gov/dcs)

“Orders may be considered for modification at the request of either parent.”

**EITHER!**

**[in.gov/dcs](http://in.gov/dcs)**

“Indiana law allows for a party to a child support order to petition the court to modify the amount of child support...”

“A party” = the child.

You represent the child.

“A party” = YOU.

**But why would the IV-D office ask for less money?**

Less money?

More money?

**I DO NOT CARE.**

Unless there are extraordinary circumstances, we enforce the worksheet.

**THAT IS IT.**

# But why would less money be in the best interests of the child?

“...[N]on-custodial parents tend to view the methods employed to collect support and arrearages as a disincentive to seek legitimate gainful employment...”

# But why would less money be in the best interests of the child?

“ Research suggests that high maximum garnishment rates and other enforcement mechanisms tend to discourage employment, particularly among the lower socioeconomic strata.... [T]here is thus a strong incentive to seek work in the ‘underground economy’ where it is difficult...to track earnings and collect payments.”

Chief Justice Randall Shepard  
*Lambert v. Lambert*,  
801 N.E. 2d 1176, 1180 (In. 2007 )

**But how would I know who needs a  
modification if no one asks for it?**

Your Regional Field Consultant  
would love to show you  
where your Data Warehouse reports are!

**SIGNS THAT IT IS TIME  
TO PLAY OUR FAVORITE GAME:**

**MODIFY THAT  
ORDER!!!**

# SIGNS THAT A MODIFICATION IS AFOOT:

1. The NCP is delinquent.

# MAGIC WORD!!!

Indiana Code 31-25-4-2

Delinquent:

\$2000 in arrears

OR

Three months of no payment

# SIGNS THAT A MODIFICATION IS AFOOT:

2. Your Income Withholding Order is pulling money from an unemployment check. NCP's income has almost certainly changed. It is now \$290.\*  
\$290 is also a magic number. Wait for it...

# SIGNS THAT A MODIFICATION IS AFOOT:

3. NCP is making payments, but they are not the full amount of the order, and so you are still accumulating an arrearage.

# SIGNS THAT A MODIFICATION IS AFOOT:

4. Any other circumstances in which you are receiving payments that are less than what was ordered...

# THE RULE TO SHOW CAUSE IS FOR CONTEMPT FOR FAILURE TO PAY.

If there is money coming in, but it is the wrong amount, find out why...

## IT WILL SAVE YOU PAPERWORK LATER.

Plus, it is better for the children.



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If you have money coming in, try to do another worksheet first.

**Okay, I did the worksheet and got a new number. Now what?**

How much did it change?

**SEE: Indiana Code 31-16-8-1!**

# Indiana Code 31-16-8-1

Modification may be made only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable OR a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines.

# MAGIC WORDS!!!

**OR =** You only need one of the things.

**AND =** You shall\* have both or all of the things.

**\* = POP QUIZ!!!**

# MAGIC WORDS!!!

SHALL = NO DISCRETION! NO CHOICE!

MAY = DISCRETION! ONE WAY OR THE OTHER!

# Indiana Code 31-16-8-1

[T]he order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

# Indiana Code 31-16-8-1

Modification may be made only...

1. When there is the substantial change...

**OR...**

2. The worksheet indicates a change of 20% ...

**AND**

The last modification was more than a year ago.

What does “changed circumstances so substantial and continuing as to make the terms unreasonable” mean?

It means that you can petition for the modification when you feel it is appropriate. The judge will then decide.

# BUT!

Unemployed = \$290 (The current minimum wage x 40 hours / week.)

This is the **MIMIMUM** income for **BOTH** parents.

There is no such thing as zero. \*

\* “Zero” applies to inmates of the Department of Correction.  
We’ll talk about that in a few...

This is YOUR rule:

The new amount is different by 20%?

The new amount is the correct amount.

The new amount is NOT different by 20%?

The OLD amount is the correct amount.

Example:

NCP asks for a modification.

NCP was paying \$50.

The threshold is 20% either way (\$10.) The number must be less than \$40 or more than \$60.

The new number is... \$42.

You deny the modification. You do not file.

Example:

NCP asks for a modification.

NCP was paying \$50.

The threshold is 20% either way (\$10.) The number must be less than \$40 or more than \$60.

The new number is... \$39.

You file the petition.

Example:

CP asks for a modification.

NCP was paying \$50.

The threshold is 20% either way (\$10.) The number must be less than \$40 or more than \$60.

The new number is... \$59.

**YOU DO NOT FILE THE PETITION!!!**

Example:

CP asks for a modification.

NCP was paying \$50.

The threshold is 20% either way (\$10.) The number must be less than \$40 or more than \$60.

The new number is... \$39.

**YOU FILE THE PETITION!!!**

THEY BOTH ARE!!!



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Well, if the support is going to go down, then I do not want to ask for the modification anymore.

So sorry! The other party knows about it, too! Thanks for calling in!

Well, just tell me if it is going down or not, and then I will decide to ask for it or not.

So sorry! Cannot do anything without asking the other party for info! Then they will know! You are in, or you are out! Thanks for calling in!

The Moral of the Story:

**BE CAREFUL  
WHAT YOU ASK FOR.**

And you should always tell them this before you even start... because once you start, it is ON.

WHAT ABOUT...

UIFSA

???

# THE “PLAY –AWAY” RULE

Jurisdiction goes to the party who did NOT ask for the modification.

Example:

Indiana order.

CP in Michigan asks for modification.

NCP in Ohio.

Jurisdiction for modification goes to Ohio.

Example:

Indiana order.

CP in Michigan.

NCP in Ohio asks for a modification.

Jurisdiction for modification goes to Michigan.

# HUH????

1. It puts the burden of inconvenient jurisdiction on the person who asked for it, thereby reducing frivolous actions.
2. It gives the advantage of convenient jurisdiction to the office trying to gather information from the adverse party.

But my NCP is in Florida, Texas,  
California, New York City, or Chicago!

**PUT THE FILE BACK IN THE  
DRAWER AND PRAY FOR A TAX  
INTERCEPTION OR AN INCOME  
WITHHOLDING ORDER !**

**IT IS THE ONLY WAY YOU  
WILL EVER SEE A DIME!**

(You should periodically send a transmittal, so that you can say you did. Just know that nothing will happen, then move on.)

But my NCP is in the Department of  
Corrections!



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This is something you can actually address.

The *Lambert* case established modifications for inmates.

“The choice to commit a crime is so far removed from the decision to avoid child support obligations that it is inappropriate to consider them as identical...”

“The ultimate lesson to be drawn from this research is that when high support orders continue through a period of incarceration and thus build arrearages, the response by the obligor is to find more methods of avoiding payment...”

“To the extent that an order fails to take into account the real financial capacity of a jailed parent, the system fails the child by making it statistically more likely that the child will be deprived of adequate support over the long term.

*Not Imputing Income Is the Best Solution.”*

Chief Justice Randall Shepard

*Lambert v. Lambert,*

801 N.E. 2d 1176, 1180-1181 (In. 2007.)

Modify the child support to a zero dollar order.

The order must say \$0!!!

Instantly, you have a case that is paying current support. This is good for your...

PLUS!!!

It is like any other modification. You can file it yourself, and the court **may** grant it by motion.

The inmate qualifies for the modification by law.

Save yourself the time; just file it.

**THEN SEND AN INCOME WITHHOLDING  
ORDER TO THE PRISON FACILITY FOR  
\$1 PER WEEK OUT OF THE NCP'S  
COMMISSARY ACCOUNT!**

Now you also have a case paying on  
arrears! Also good for your...

You did not pay child support when  
you could have?

**THEN YOU DO NOT GET  
TWINKIES IN JAIL!**

One final note:

Remember that modifications are only retroactive to the **date of filing**.

**THE SOONER YOU FILE IT, THE BETTER!**

**So, again... why file for a  
modification of child support?**

Because when it is time for one, it is  
almost always better for everybody.